REMARKS

Upon entry of the present amendment, claims 1, 5-10, 13, 14, 17-25, and 41, 42 remain in the application. Claims 2-4, 11, 12, 15, 16 and 26-40 have been cancelled.

The drawings have been objected to under 37 C.F.R. § 1.84. Upon indication that the present application is in condition for allowance, Applicant will provide corrected drawings to place the drawings in compliance with 37 C.F.R. § 1.84.

Claims 27-37 stand withdrawn from examination as drawn to non-elected claims. However, Applicants have cancelled claims 27-37 thereby rendering moot any objections thereto.

Claims 1, 2, 5, 6-10, 13, 14, and 16-25 stand rejected under 35 U.S.C.§ 112, first paragraph as allegedly failing to comply with the written description requirement. Claim 1 is an independent claim and the remainder are claims dependent on claim 1. Specifically, claim 1 contained reference to a "first layer" which was allegedly not supported in the specification. Applicants have amended claim 1 to overcome the rejection under 35 U.S.C.§ 112, first paragraph.

Claims 41 and 42 stand rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. Applicants have amended claims 41 and 42 to further define the subject matter Applicants regard as the invention.

Claims 1,2,5,6-10,16-25,41 and 42 stand rejected under U.S.C. § 103(a) as allegedly being unpatentable over Jackson et al. (WO 00/06161) in view of Stevens et al. (US 5,112,621).

Without prejudice to Applicants' rights and in the interest of facilitating prosecution, the Applicants have amended claim 1. Claim 1 now defines the water insoluble layer as

"consisting essentially of a water permeable acrylic co-polymer and optionally at least one of a plasticizer, an anti-tacking agent or a wetting agent."

WO 00/10616 (page 7, line 29) proposes that eletriptan, or a salt thereof, can be administered in the form of a sigmoidal releasing pellet by applying the technology disclosed in US 5,112,621 in relation to diltiazem. US Patent 5,112,621 discloses a coating mixture comprising ethyl cellulose and an acrylic resin. Applicants submit that Stevens et al. teach a formulation which requires both an acrylic resin and ethyl cellulose in the coating. In fact, claim 1, the only independent claim in US 5,112,621, defines "a coating mixture consisting essentially of ethyl cellulose and an acrylic resin in a ratio from 6:4 to 4:6 by weight." (col. 3, l. 26-28). Stevens et al. states that "the dissolution of microparticles coated with Eudragit RS is pH-dependent" (col 3, l. 13-14), that "the dissolution of microparticles coated with ethyl cellulose is pH-dependent" (col. 3, l. 11-12) and that "The fact that the dissolution of the sustained-release compositions of the invention is pH-independent is very important" (col. 3, l. 18-20). Since the Stevens et al. reference teaches that it is important that the dissolution of the sustained-released compositions be pH-independent and this was only achieved by combining both Eudragit and ethyl cellulose together in a coating, Applicants respectfully submit that its presently claimed invention is not obvious in view of the cited references. Applicants assert that US 5,112,621 to Stevens et al. teaches away from the presently claimed invention.

In view of the amendments set forth herein and remarks above, the applicant respectfully submits that the pending claims are fully allowable, and solicits the issuance of a notice to such effect. If a telephone interview is deemed to be helpful to expedite the prosecution of the subject application, the Examiner is invited to contact applicant's undersigned attorney at the telephone number provided.

The Commissioner is hereby authorized to change any fees required under 37 C.F.R. §§1.16 and 1.17 or to credit any overpayment to Deposit Account No. 23-0455.

Respectfully submitted,

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